

# IN THE HIGH COURT OF SINDH, KARACHI

*High Court Appeal No. 13 of 2022*

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI  
MR. JUSTICE MEHMOOD A. KHAN

***Muhammad Sadiq***

***Vs.***

***Dawood Jan Muhammad and others***

***Appellant:*** through Mr. S. M. Jehangeer Akhtar,  
advocate.

***Respondents:*** through M/s. Shariq Raza and Ahmed  
Masood, advocates.

***Date of Hearing:*** 18.02.2022.

***Date of Order:*** 18.02.2022.

## **O R D E R**

**AQEEL AHMED ABBASI, J.-** Instant High Court Appeal has been filed against an order dated 16.12.2021 in Suit No.318/2020, whereby, learned Single Judge has been pleased to dismiss two (02) CMAs i.e. CMA No.1966/2020 filed by the respondent under Order VII Rule 11 CPC seeking rejection of plaint and CMA No.4370/2020 filed by the appellant under Order XXXIX Rule 1 & 2 CPC, seeking an injunctive relief against the respondent with the prayer that respondents may be directed not to create any 3<sup>rd</sup> party interest in respect of suit property. The appellant feeling aggrieved by dismissal of injunction application i.e. CMA No.4370/2020 has preferred instant High Court Appeal with a prayer to set-aside the impugned order and to grant interim relief as prayed.

2. The impugned order reads as follows:-

"16<sup>th</sup> December, 2021.

Mr. Moiz Ahmed advocate for the plaintiff.  
Mr. Ahmed Masood advocate for defendant No.1 & 2.  
Ms. Rehmat-un-Nisa advocate for KDA.

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Heard learned counsel for respective parties on listed applications. Application under Order VII Rule 11 CPC seeking rejection of plaint on the account that suit is time barred as well as plaintiff has failed to seek cancellation. For relevant Para-5 & 6 of the plaint is that:

***"5. That for the aforementioned consideration by the plaintiff, the defendant No.1 being short of funds was to pay him according to market value, at the time of the announcement of the project, the cost of the suit property, a 12 percent working share from the profits of the project and a salary of Rupees Two hundred Thousand per month only. It is pertinent to mention that any out of pocket expenses were to be borne by the defendant No.1.***

***6. That on the said assurances of defendant No.1, the plaintiff started working and procured all 121 shops for the defendant No.2 as instructed by defendant No.1. The defendant No.1 paid most hawkers but did not pay the plaintiff citing liquidity problems and the promise that as soon as the booking starts, he would get his payment at the then market value. The plaintiff was however paid a part of his salary in a piecemeal fashion and in his was from 2004 to 2018, he was paid a total amount of 60 Lacs as part salary whereas he is yet to be paid the remainder".***

It is settled principal of law that while deciding application under Order VII Rule 11 CPC plaint is to be deemed as true and correct and admitted document can be examined whereas, disputed documents cannot be relied. Bundle of facts as set out in the plaint give cause of action hence, application under Order VII Rule 11 CPC

is rejected. With regard to injunction application, admittedly there is alternate prayer which seeks recovery of amount hence, in case where alternate prayer for recovery of amount injunction application cannot be allowed. Accordingly, injunction application is dismissed. Guidance is taken from the case of Puri Terminal Ltd. V. Govt. of Pakistan & Ors 2004 SCMR 1092 wherein it is observed as:-

***“21. No doubt an injunction is a form of equitable relief and is to be issued in aid of equity and justice but not to add injustice. For grant of such relief, it is mandatory to establish that in order to obtain an interim injunction, the applicant has not only to establish that he has a prima facie case, but he has also to show that the balance of convenience is on his side and that he would suffer irreparable injury / loss unless he is protected during the pendency of suit. It is pertinent to note that the petitioner irrespective of seeking declaration, permanent injunction, compensation also claimed damages as an alternative relief. By claiming damages as an alternative relief, the petitioner seemed to be not confident about the grant of other relief. Section 56 of the specific Relief Act stipulates that an injunction cannot be granted in the cases where an interference is sought in the functions of public duties of any department of the Federal Government or any Provincial Government or department of the Federal Government or any Provincial government or with the sovereign acts of a foreign government. Though it was a service matter yet this Court in the case of Province of West Pakistan through the Deputy Commissioner, Hyderabad and another v. Malik Asghar Khan 1971 SCMR 569 held that issuance of temporary injunction against the Government departments in respect of service matters is bound***

***to disturb their wrong and they should not ordinarily be issued unless there are compelling reasons to do so because balance of convenience ordinary would not lie in disturbing the administrative arrangements of a department. On the question of any irreparable injury it has also been observed that respondent on refusal of temporary injunction can claim a monetary compensation in case he succeeds in the suit. To further fortify , it would be relevant to refer the case of Ghulam Nabi and others vs. Seth Muhammad Yaqob and others PLD 1983 SC 344 wherein this Court has observed that in view of provisions of section 56(i) no injunction should be granted when equally efficacious relief can certainly be obtained by any usual mode of proceedings. Since the petitioner has claimed compensation / damages as an alternative relief in the suit, as such the above principle is fully attracted in the instant case."***

3. The appellant has impugned the order to the extent of dismissal of an injunctive application on the ground that the appellant has a prima-facie case for grant of injunction, therefore, the learned Single Judge was not justified to decline injunctive relief to the appellant. It has been argued by the learned counsel for the appellant that reliance placed by the learned Single Judge on the judgment of the Hon'ble Supreme Court in the case of ***Puri Terminal Ltd. V. Govt. of Pakistan & other (2004 SCMR 1092)*** is misplaced as the facts of the instant case are distinguishable. According to learned counsel for the appellant, if injunctive relief is not granted in favour of the appellant, the relief claimed by the appellant in the suit will become infructuous, whereas, the alternate relief claimed by the appellant will not be an adequate remedy to the appellant. Crux of the argument of learned counsel for the

appellant is that respondent has not paid the sale consideration as per market value, and has also failed to pay the salary amount, therefore, directions may be issued to make payment of such amount as per commitment and in the meanwhile, restraining order may be passed against respondent not to create any third party interest in the subject property. It has been prayed that the impugned order may be set-aside and the injunctive relief may be granted to the appellant as prayed.

4. Conversely, learned counsel for the respondents present in Court pursuant to notice under Order 43 Rule 3 CPC, undertake to file vakalanatnama on behalf of the respondents and requests for time to file reply/objections to the appeal. However, learned counsel for respondents submitted that instant appeal is misconceived and has no merits, as the very suit filed by the appellant is barred by law, whereas, from perusal of the plaint it is evident that the appellant is mainly claiming purported balance sale consideration as per market value of the subject property, and has also claimed recovery of amount towards purported salary dues compensation alongwith damages, whereas, transaction of sale of the subject property by the appellant to the respondent, which was admittedly concluded in the year 2004, has not been disputed, nor the appellant has sought cancellation of such transaction through subject suit. It has been further submitted by the learned counsel for the respondent that without prejudice to hereinabove submissions, it is also evident that since, the appellant has prayed for alternate relief in terms of compensation and damages, besides recovery of alleged amount towards purported sale consideration as per market value and salary dues, therefore, the learned Single Judge while placing reliance on the judgment of the Hon'ble

Supreme Court as referred to hereinabove, has rightly rejected the injunction application filed by the appellant, therefore, instant High Court Appeal is totally misconceived and not maintainable, the same is liable to be dismissed in limine.

5. We have heard the learned counsel for the parties, perused the impugned order passed by the learned Single Judge and have also examined the record, including contents of the plaint and the relief sought through prayer clause. We have also examined the nature of injunctive relief sought through injunction application being CMA No.4370/2020, filed by the appellant under Order XXXIX Rule 1 & 2 CPC, which reflects that admittedly, the transaction of sale and purchase of the subject property (stalls) i.e. Nos.4, 20, 21, 48, 61, 68, 84, 109, 159, 160, 162, 175, 177, 178, 198, 88, 163, 164, 173, 174, 108, took place in the year 2004 and the possession of the subject property was handed over by the appellant to the respondent accordingly. Thereafter, the subject property was sold out by respondent No.1 in the year 2014 to 3<sup>rd</sup> party. As per pleadings, it has also transpired that during the year 2004 to 2018 the appellant did not file any legal proceedings or any objection against the respondent's seeking the relief as sought through subject suit, nor has sought cancellation of documents relating to sale of the subject property through subject suit. However, it has been claimed that respondents are liable to pay balance sale consideration in respect of subject property as per market value along with salary dues, however, no detail of such claim and/or the evidence, if any, has been given or reflected from the pleadings. It has been further noted that without seeking cancellation of the documents/transaction of sale and purchase of subject property, the appellant has prayed for a declaration to the

effect that appellant may be declared to be the owner of the suit property, and also entitled to get back the vacant possession, which was admittedly handed over in the year 2004, whereas, as per pleadings, 3<sup>rd</sup> party interest has also been created in the year 2014. In alternate to above relief the appellant has claimed for payment of balance sale consideration as per market value of the suit property, payment of Rs.6 million to the appellant towards his unpaid salary from the year 2014 to 2019 and also to grant damages and compensation in the sum of Rs.400 million as an alternate relief.

6. Keeping in view hereinabove admitted facts and circumstances of the case and without commenting on the merits of the claim of the appellant, the issue of maintainability of suit, and the point of limitation as may be attracted in the instant case relating to various reliefs sought in the subject suit, as well as the ratio of the judgment of the Hon'ble Supreme Court of Pakistan relied upon by the learned Single Judge in the impugned order, we do not find any legal infirmity and factual error in the impugned order passed by the learned Single Judge while dismissing the injunction application of the appellant, as the appellant could not make out a prima-facie case, irreparable loss and injury and balance of inconvenience, towards grant of injunction in his favour. Accordingly, instant High Court Appeal being devoid any merits, was dismissed in limine vide our short order dated 18.02.2022 and above are the reasons of such short order.

***JUDGE***

***JUDGE***